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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,779	12/14/2001	Scott R. Swix	36968.265393 (BS01377)	9532
7590 01/09/2008				
Scoot Zimmerman P O Box 3822 Cary, NC 27519			EXAMINER VAN BRAMER, JOHN W	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/020,779	Applicant(s) SWIX ET AL.	
	Examiner John Van Bramer	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2007 has been entered.

Response to Amendment

2. The amendment filed on October 12, 2007 cancelled claims 7, and 9-16. Amendments were made to claims 1 and 17-20. No new claims were added. Thus, the currently pending claims addressed in this Office Action are 1-6, 8, and 17-20.

Claim Objections

3. The amendments to claims 17-20 have corrected the issues objected to in the Office Action dated July 17, 2007. Therefore, the examiner hereby withdraws the objections.

Claim Rejections - 35 USC § 103

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 8, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al (U.S. Patent Number: 6,463,585).

Claims 1 and 17: Hendricks discloses an advertisement management method and system, comprising:

- a. Receiving programming content delivered as a scheduled lineup having an advertisement inserted into a future advertisement time slot, the programming content scheduled to be broadcast in the future from a network provider's server to a subscriber's equipment (Fig. 13, and Col 10, line 61 through Col 11, line 25)
- b. Categorizing, at the network provider's server, the advertisement as overrideable or non-overrideable, the overrideable categorization allowing the advertisement to be replaced with a different advertisement, and the non-overrideable categorization not allowing replacement of the advertisement and allowing the advertisement to be delivered as scheduled. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38)

- c. Receiving, at the network provider's server, an advertiser's request to replace the advertisement with a different advertisement. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38])
- d. Determining, at the network providers server, an advertisement is replaceable by a different advertisement, and the different advertisement is nearly equal in time length to the advertisement. (Fig 29; Col 33, lines 18-42; and Col 67, lines 45-52)
- e. Determining , the by network provider's server, that the different advertisement has been recorded in a compatible format with the scheduled broadcast. (Fig 29; Col 33, lines 18-42; Col 67, lines 45-52Col 48, lines 54-63; and Col 51, lines 49-64)
- f. Searching, by the network provider, to determine a time of broadcast of a previous advertisement relating to a similar type of product as the different advertisement (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49)
- g. When the advertisement is categorized as overrideable, and when the advertisement and the different advertisement are nearly equal in time length, then replacing the advertisement with the different advertisement, such that the different advertisement is inserted into the programming content. (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through

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Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49).

- h. Broadcasting the programming content to the subscriber's equipment, the broadcasted programming content having the advertisement replaced with the different advertisement. (Col 4, lines 25-67; and Col 34, lines 22-38)

While Hendricks does not specifically state that similar advertisements are not broadcast within 2 hours of each other, he does disclose tracking the advertisements that are watched and adjusting the weighting of the advertisement or advertisement group based upon this factor (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to utilize a time frame associated with this weighting factor. One of ordinary skill in the art at the time the invention was made would understand that programs typically run in predictable lengths of time such as 30 minutes, 60 minutes and two hours. The rationale for including a two hour time frame for the weighting factor is that there are a limited number of predictable program lengths from which commercial insertion occurs for a single program within a given program schedule.

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Claims 2 and 18: Hendricks discloses the method and system of claims 1, 9 and 17 respectively, further comprising receiving a premium to replace the advertisement. (Col 71, lines 11-29)

Claims 3 and 19: Hendricks discloses the method and system of claims 1, 9 and 17 respectively, wherein the overrideable advertisement is priced at a lower cost than the non-overrideable advertisement. (Col 11, line 55 through Col 12, line 9; Col 34, lines 22-44; and Col 70, lines 31 through Col 71, line 49)

Claims 4, and 20: Hendricks discloses the method and system of claims 1, 9 and 17 respectively, further comprising providing data regarding viewing habits that distinguishes more-valuable viewers from less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 5: Hendricks discloses the method of claims 1 and 13 respectively, further comprising matching advertisements with the more-valuable viewers and with the less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 6: Hendricks discloses the method of claims 1 and 9 respectively, further comprising wherein at least one of: broadcasting the programming content as a television broadcast, broadcasting the programming content as a radio broadcast, and broadcasting the programming content over a network. (Col 4, lines 25-67)

Claim 8: Hendricks discloses the method of claim 1, further comprising creating a log of events viewed by potential customers. (Col 45, lines 20-46; and Col 47, lines 46-60)

Response to Arguments

6. The Applicant's arguments with respect to claims 1-6, 8, and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

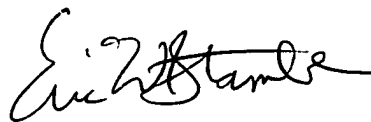
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jvb

/jvb/



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